

Remarks/Argum nts

Claims 15 to 32 are pending. Claims 15, 17, 18, 21, 24, 26 and 30 have been amended. Claims 18, 21, 24 and 26 have been put into independent form.

Claims 15 to 32 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

The Office Action stated that, in Claim 15, lines 13 to 14, the limitation, "with the opening aid corresponds with the recess opening" makes no idiomatic sense, and is vague since it is unclear what structure is being required in the claim by the term "corresponds." Applicants have replaced it with the word "matching," that means to fit together or suitable for fitting together.

The Office Action stated that, in Claim 17, the limitation, "wherein the surface parts is pressed out" does not make idiomatic sense. This matter has been corrected.

This rejection should be withdrawn.

The Office Action stated that Claims 18 to 21 and 24 to 29 would be allowable if rewritten to overcome to rejection under 35 U.S.C. 112 and to include all of the limitations of the base claim and any intervening claims. Applicants thank the Examiner for indicating that such claims contain allowable subject matter. Those of such claims that are directly dependent upon independent Claim 15 have been placed in independent form. Applicants believe that the broader claims are also allowable.

The Office Action stated that, regarding Claim 21, the semi-circular weakening line is treated as being positively recited structure in the claim.

Claims 15 to 17, 22, 23 and 32 have been rejected under 35 U.S.C. 102(b) as being anticipated by De Felice (U.S. Patent No. 4,231,477). Applicants traverse this rejection.

There is no anticipation under Section 102(b) unless the prior art references discloses each and every element, limitation and the like in recited a claim and in the relationship recited in the claims. Independent Claim 15 requires fold line 7, however De Felice does not have any fold line in its original structure. Accordingly, De Felice does not anticipate any of applicants' claims.

Claim 15 recites “...the surface element (6) has a fold line (7), located between the opening aid (9) and the recess opening (3), at which the surface element (6) is folded down from the blister pack (1) and swiveled at least to the concave side of the recess (3),....” [Emphasis Supplied] So Claim 15 requires a preformed fold line (7) in the surface element (6) of the structure of the blister pack (1). De Felice does not disclose any fold lines, preformed or otherwise.

While bent edge (7) of De Felice can be formed by bending element (7), defined by two cut lines 6, downward with a fold line occurring along the base of the bent (triangular) edge (7), there is no fold line along such base, until bent edge 7 is bent downward, and such does not provide applicants' “fold line (7)” in the initial structure of De Felice (as required by applicants' Claim 15). This is clearly shown in Figure 1 of De Felice.

Even after blister pack (1) of De Felice is flexed so as to form a "C" shape, no fold line is formed between the two portions thereof facing each other. This is clearly shown in Figure 3 of De Felice.

De Felice does not anticipate any of applicants' Claims 15, 16, 17, 22, 23 and 32.

The blister pack (1) of Claim 15 is in the state before it is folded along fold line (7). Claim 15 recites that the blister pack (1) can be (i.e., is capable of being) folded along (recited requirement) fold line (7). The Office has made the mistake of referring to a fold line formed upon bending down bent edge (7). There is no fold line in the initial structure of De Felice, which is the time of the structure required by Claim 15. The Office has made the further mistake of trying to show a fold line (that does not exist) in the initial De Felice structure by bending down bent edge (7) to provide a base fold line that does not exist until then – however, this is not the time of state of the blister pack (1) of Claim 15.

Applicants require the existence of fold line (7) before its blister pack (1) is folded and its opening aid (9) is formed by detachment along a weakened line (8').

The Office Action stated: that in De Felice there is a blister pack described including blister recesses 4, a flat shoulder surface/film 2, cover/covering film 3, and incision pattern 6; that the shoulder and recesses together constitute the base part of the pack; and that the incision pattern form cutting points (col. 2, lines 10 to 17) and an edge 7 which will puncture the film. This does not provide a fold line present and already formed in the initial structure of De Felice. The Office

Action stated that, therefore, the cutting points and edges 7 may be said to constitute opening aids. There still is no preformed fold line in De Felice.

The Office Action stated that the triangular panel which includes these opening aids may be considered to constitute a surface element insofar as applicants have claimed. Applicants traverse this statement. In Claim 15, opening aid(s) (9) are part of the surface element (6) and do not constitute in total the surface element (6).

The Office Action stated that each of the recesses on its concave side is covered by the cover film 3. Such information does not provide anticipation.

The Office Action stated: that the incision patterns 6 are formed by corner-shaped incisors, as shown in Figure 1; and that the Examiner asserts that the incisions constitute intersecting weakening lines since they will weaken the base part of the pack. Applicants traverse this statement. The incisions of De Felice are only located in the corner areas. De Felice does not teach or suggest locating its incisions any other place. The Office asserts that the corner-shaped incisors constitute weakening lines. However they do not form a fold line in the initial structure of De Felice, and do not cure the outward spring-like pressure resulting from bonding the De Felice blister package.

The Office Action stated: that after forming the recesses in the base part and after forming the opening aides 6,7, which includes making the weakening lines/incisions, the base part is punched out (i.e., cut-out); and see column 1, line 64, though column 2, line 9. De Felice does not have a fold line located between the bent edge (7) and recesses (4). The bend line, that is not preformed and is

not present in the initial De Felice structure, of bent edge (7) is the only fold of De Felice. Such bend line is only part of the bent edge (7) only after bent edge (7) has been bent down. The after-formed bend line of bent edge (7) [after bent edge (7) is bent down] is the nonsecured edge of bent edge (7).

Claim 15 has been amended to recite that fold line (7) was preformed.

Webster's Seventh New Collegiate Dictionary, (1963), states:

“preform...: to form or shape beforehand” [Page 670]

The Random House Dictionary, (1983), states:

“preform...1. to form beforehand” [Page 1134]

Applicants' specification states:

“...the surface element (6) has a fold line (7) at which the surface element (16) can be bent out from the blister pack (1) and swivelled at least to the concave side of the recess (3),....” [Emphasis Supplied]

[Original Claim 3, lines 3 to 5]

Fold line (7) is preformed and is not formed after the bending of surface element (6). This is not the situation in De Felice, as readily shown by Figure 1 thereof. In essence, the unnumbered base of (pointed) tooth (7) of De Felice is postformed as it does not come into existence until tooth (7) is swivelled downward.

Applicants' specification, for example, also states:

“Furthermore, fold lines can be provided, along which the surface parts can be bent. The opening aids and associated surface parts have advantageously effective opening edges and/or points, which can be

brought onto the surface areas of the cover film to be opened.” [Page 4, lines 31 to 34]

“Fold lines are suitably designed in such a way that parts can be bent or completely removed at these. They are not separating lines, so it is impossible or very difficult to detach the parts along a fold line by hand.”

[Page 4, lines 36 to 38]

“The surface element is delimited from the rest of the base part by way of one or more weakening lines and by at least one fold line in such a way so that the surface element is separated from the base part along the weakening line and can be placed over the neighbouring recess opening by folding it down along the fold line. The fold line is preferably arranged between the surface element and the recess.” [Page 5, lines 13 to 18]

“The surface elements can be bent along the fold line. The fold line should in particular ensure sufficient connection between the surface element and the rest of the blister pack after several folds. The fold line is suitably shaped in such a way so that the surface element can be swivelled in both directions, for example clockwise and anti-clockwise.”

[Page 5, lines 25 to 29]

“A blister pack in accordance with the invention can be produced in that recesses can be formed from a flat composite foil and the recess can be filled with contents and a cover film can be sealed to the composite foil over the recess openings of the recesses and fold lines and/or weakening lines of the opening aid can be arranged in the composite film with cover

film, and blister packs with one or more recesses can be cut out." [Page 7, lines 2 to 7]

"In addition, in the case of blister packs with several recesses, the fold lines and/or weakening lines of the surface elements can be applied before the pack is cut to size." [Page 7, lines 9 to 11]

Figures 1a, 1b, 1c, 2b, 3, 5 and 6 show fold lines (7).

Applicants' specification states:

"This can take place e.g. through folding the surface element 6 along the fold line 7 on the convex side of the base part 2, whereby the recess 3 is pressed out on complete folding of the opening aid 9'. By bending the surface element 6 along the fold line 7 on the concave side of the base part 2, the cover film 5 in the area of the recess opening 4 can be separated or weakened with the semi-circular cutting edge of the opening aid 9'." [Page 9, lines 30 to 35]

"The surface elements 6 are also delimited from the recesses 3 by fold lines 7. The surface elements 6 with the opening aids 9 can be removed along the weakening lines 8 from the blister pack 11 and can be folded over along the fold line 7 onto the recess 3 or recess opening." [Page 10, lines 16 to 19]

De Felice does not disclose any fold line that allows one of its bent edges (7) (even the point thereof) to correspond to (to overlie) the opening of one of its recesses (6). Even folding one of De Felice's bent edges (7) back over the base

line thereof does not achieve such result (that is required in applicants' Claim 15). De Felice does not anticipate any of applicants' claims.

The Office Action stated: that it is to be noted that the fold lines shown in Figures 2 and 3 are bent by the patient (col. 2, lines 13 and 14); and that the opening aids/surface elements once bent, as is shown in Figures 2 and 3, are therefore capable of being bent by the patient again along such fold lines to the convex side of the recesses since the material is only plastic sheet. Applicants traverse this statement. Such fold lines are not the same as applicants' fold line, are not preformed, are post formed, do not serve the same purpose, and do not cure the problem solved by applicants' system. Such fold lines are not involved in the bending of De Felice in order to use bent edges (7) to pierce the portions of covering film (3) over recesses (4). There is no way that bent edges (7), once bent out, can be bent into place over any recess (4) by means of the fold lines at the base of bent edges (7). The only way to get any bent edges (7) over top of any recess (4) is to bend the blister package over on itself. There is no fold line taught or suggested by De Felice that allows its blister package to fold over on itself. Applicants' claimed invention recognizes and solves the problem with the De Felice scheme.

The Office Action stated: that applicants have argued that the opening aid of De Felice is placed over the recess opening by flexing the blister pack and not by swiveling it about a fold line; and that, however, this argument involved the use of the package. The Office's position establishes that there is no anticipation be De Felice. The structure of Figure 1 of De Felice does not have any fold line.

It is only after use of the De Felice structure in Figure 2 thereof that a fold line occurs, but in such situation edge (7) is no longer in the plane of the surface element (2/3). The limitations and elements of applicants' claims are not taught or suggested by De Felice.

The Office Action stated that, furthermore, the claims of applicants do not prohibit package flexing. This is meaningless because it involves use, not structure, and an anticipation rejection is involved. The Office must be consistent.

The Office Action stated that, inasmuch as the opening aid/surface element of De Felice is fold about the fold line, shown in Figure 2 of the reference, and also inasmuch as the opening aid is will contact the film cover portion over the package recess by flexing the package, applicants' claim language fails to distinguish over the package disclosed by De Felice. Applicants traverse this statement. Figure 1 of De Felice shows that the blister pack thereof does not have a fold line, so there is no anticipation.

The Office Action stated that, in addition, the triangular surface element of De Felice is not only capable of being folded out of the plane of the package at the base fold line of the triangle, it is also capable of being folded back along the cover film over the closest recess. Applicants traverse this statement. De Felice does not have a preformed fold line so De Felice does not anticipate any of applicants' claims.

The Office Action stated: note in Figure 3 that the distance from the point of the opening aid to the fold line is shown to be greater than the distance

between the fold line and the recess. Applicants traverse this statement. De Felice does not have a fold line until its triangular element has been folded out. Therefore, Figure 3 does not have any relevance to applicants' distance limitation.

The Office Action stated that, however, even if the point of the opening aid would not be capable of extending over the closest recess by merely folding the triangle at the base fold line. Applicants traverse this statement. De Felice does not have a preformed fold line.

The Office Action stated that applicants' claimed subject matter fails to distinguish over the package of De Felice. Applicants traverse this statement since De Felice is not an anticipatory reference.

The Office Action stated that this capability of bending over the convex side reads on what applicants have claimed in Claim 16 since the claimed bending in the limitation, "is folded down from the blister pack and swiveled to the concave and convex sides of the recess," is recited in the manner as intended use and not as structure in the claim. Applicant traverses this statement. The Office's assertion of mere "intended use" is in error. The recited claim structure can achieve such result while the structure of De Felice cannot, and the reason is that De Felice recites different structure. In the flat state, De Felice does not have a fold line.

The Office Action stated that the reason that the limitation must be read as intended use is based upon the limitation claiming the swiveling as being to both the concave and convex sides. Applicants traverse this statement. De Felice's

postfold line only allows the swiveling of bent edge (7) and nothing else.

Applicants recite different structure, so there is no anticipation by De Felice (and there is no obviousness rejection of record of the involved claims).

The Office Action stated that, if the limitation were to be read as structure, the limitation would be contradictory since at an point in time the surface elect/opening aid must be in the concave side or the convex side, but cannot be on both sides at the same time. Applicants traverse this statement.

The Office Action stated that the capability also reads on what is claimed in Claim 17 since the claimed folding constitutes intended use and not structure in the claim because, again, the folding is on both the concave and convex sides. Applicants traverse this statement as clearly being factually in error. Applicants claim structure having a resisted actual fold line (that exists before any folding) – see applicants' Figure 1. De Felice does not have an actual fold line until folding occurs – see De Felice's Figure 1. So there is no anticipation. De Felice only gets a fold line after folding – De Felice's Figure 2.

The Office Action stated that, regarding Claim 22 which calls for plural fold lines, the four cutting points of De Felice may be considered to define an opening aid folded out of the plane of the base part. This does not constitute anticipation because De Felice does not disclose a fold line before its cutting points are folded out (down) – there is no fold line in Figure 1 of De Felice.

The Office Action stated that, regarding Claim 23, insofar as claimed, the triangular elements of De Felice which are bent/folded out of the base part may be considered so define wings. Again, this does not constitute anticipation

because De Felice does not disclose a fold line before its cutting points are folded out.

The Office Action stated that in the use the blister of De Felice is rolled up (more than is shown in Figure 3) so that a selected opening aid will puncture the covering film 3 over a respective recess 4. Applicants traverse this statement as being factually incorrect, among other things. De Felice bends its package over on itself – it is never rolled over. Also, the Office has already insisted that there is a fold line at the base of such of its triangular elements (but only after the triangular element is folded out). Applicants fold its blister pack over on itself, swiveling at the fold line. The Office is bending the De Felice blister over on itself, but not at the fold line at the base of a triangular element that has been folded down. The Office is inconsistent and shows that De Felice is not anticipatory.

Webster's Seventh New Collegiate Dictionary, (1963), states:

"roll up...to increase by successive accumulations" [Page 746]

De Felice bends its blister package around on itself so as to puncture a recess, but it certainly does not keep on wrapping and unwrapping around itself so as to achieve "successive accumulations."

The Office Action stated: that, regarding applicants' Claim 32, the reference of De Felice describes using the blister pack; and was column 2, lines 10 to 20. Applicants traverse this statement. De Felice does not describe a blister pack with a fold line, so there is no anticipation in the utilization claim. De Felice has no fold line that allows its blister package to be folded over on itself.

This rejection should be withdrawn.

Claims 30 and 31 have been rejected under 35 U.S.C. 103(a) as being unpatentable over De Felice (U.S. Patent No. 4,231,477) in view of published PCT Document No. WO 96/25254 (Reiterer et al.). Applicants traverse this rejection.

De Felice does not teach or suggest applicants' claimed invention.

Reiterer et al. does not cure the defects of De Felice in the search for applicants' claimed invention. The Office has not established in the record the necessary motivation to combine the two rejection references in the search for applicants' claimed invention.

The Office Action stated that the abstract of the reference of Reiterer et al. suggests that the material for making the base part of a blister pack may be composite material, including an aluminum material for the purpose of permitting the recesses to be molded by cold forming.

The Office Action stated that, accordingly, it would have been obvious in view of Reiterer et al. to have made the base part 2 of De Felice from such a composite material for the purpose of permitting the recesses of the base part to be made by cold forming. Applicants traverse this statement. It may be obvious to the Examiner, but he does not count under Section 103(a). The Examiner has not factually shown in the record the required motivation to combine De Felice and Reiterer et al.

This rejection should be withdrawn.

Reconsideration, reexamination and allowance of the claims are
requested.

Respectfully submitted,

April 20, 2004

Date

Virgil H. Marsh

Virgil H. Marsh
Reg. No. 23,083

Fisher, Christen & Sabol
1725 K St., NW, Suite 1108
Washington, DC 20006
Tel.: 202-659-2000
Fax: 202-659-2015
e-mail: FCSabol@aol.com